

Appl. No. 09/446,202
Atty. Docket No. 6741
Amtd. dated 02/26/2004
Reply to Office Action of 12/18/03
Customer number 27752

REMARKS/ARGUMENTS

Claim 14, as amended, is now in the case. Basis for the amendments appears under the Formal Matters section, below.

Formal Matters

At page 3 of the Office Action, the Examiner has asserted that there is no antecedent basis for the phrase "from the food" in the upper body of the claim, although no specific rejection has been made on this basis.

While it is maintained that the use of the phrase is abundantly clear, it is submitted that the amendments to Claim 14, presented herewith, provide additional clarity and, indeed, help to further distinguish over the cited documents (discussed below).

Claim 14 has been amended to specify that:

- i.) the impure water is contaminated with microorganisms (basis at p. 11, l. 4-5; note, all references are to WO 99/00026);
- ii.) the composition is to reduce the level of microorganisms on food (basis at p. 2, l. 5);
- iii.) the composition employs lauryl sulfate (basis in original claim and in Examples D, E, F and G; lauryl=dodecyl);
- iv.) the lower limit of the pH is specified as 11.5 (basis at p. 11, l. 19); and
- v.) the time period of at least one minute is recited (basis at p. 11, l. 14).

In light of the foregoing, it is submitted that Claim 14, as amended, is fully supported and fully meets the requirements of 35 USC 112. Entry of the amendments is requested.

Rejection Under 35USC103

Claim 14 stands rejected over U.S. 5,498,295 in view of U.S. 4,140,649, for reasons of record at pages 2-4 of the Office Action

Applicants respectfully traverse the rejection on this basis, to the extent it may apply to Claim 14, as now amended.

At the outset, it is noted that '295 does not relate to the use of lauryl sulfate in the disclosed compositions. Rather, the '295 compositions focus on combinations of fatty acids (or salts) with nonionic surfactants. Some optional anionic surfactants are noted at Col. 8, l. 49-56, but lauryl sulfate is not among them.

Moreover, '295 clearly contemplates a rinse step. See Col. 11, l. 48 and Col. 12, l. 5 and 32. In sharp contrast, the present invention recites usage instructions which specifically preclude a rinse step.

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Why is there no rinse? The present invention provides a cleaning concentrate that, even when diluted with impure water that is contaminated with microorganisms, has sufficient antimicrobial activity that the resulting solution is suitable for its intended use to rinse foodstuffs. The usage instructions provide a necessary reminder not to rinse the composition from the cleaned food, since recontamination could then occur. As disclosed at page 5, lines 1-3, of the specification, this is not intuitively obvious to the user.

The Examiner has taken the position that not to rinse the food once it has been treated with the present compositions would be a matter of common sense. It is submitted that this is hindsight. In point of fact, "common sense" would suggest boiling contaminated water before using it. Yet, gastric distress caused by impure water is rife in many parts of the world. Said another way, "common sense" is not all that common!

Therefore, it is again submitted that the usage instructions, which function together with the composition to achieve the present invention, fully meet the tests of the *Miller* and *Gulack* cases cited in the earlier responsive amendment (not repeated here, for the sake of brevity).

While the '295 document relates to methods for cleaning produce, it is submitted that it does not teach or suggest the problems associated with the use of the impure water in such cleaning processes. The same is true for the '649 document, which adds nothing to '295 in this regard.

As the Examiner is aware from case law cited at MPEP 2141.02, "[A] patentable invention may lie in the discovery of the source of a problem even though the remedy may be obvious once the source of the problem is identified." This is part of the "subject matter as a whole" test under 35 USC 103. Applicants continue to maintain that they have identified a problem nowhere recognized in the cited documents, and have solved it by a combination of composition/usage instructions.

With regard to '649, this document does teach the use of lauryl sulfate to cleanse food. However, no antimicrobial activity would appear to be suggested. Rather, any microorganisms are stated to simply be removed from the treated foodstuff through "non-specific action." See Col. 6, l. 48-50. Accordingly the compositions of '649 are not suggested to be useful in impure water that, itself, is contaminated with microorganisms.

In particular, '649 teaches (Col. 3, l. 8-10) that the wash water should have a pH between 5 and 8. This is in sharp contrast with the pH of about 11.5 to about 13 required herein.

Why the difference in pH? Because the present invention provides an antimicrobial effect, not simply a "non-specific" removal of microorganisms. This is what Applicants herein have found to be necessary when the source of rinse water is microbially contaminated.

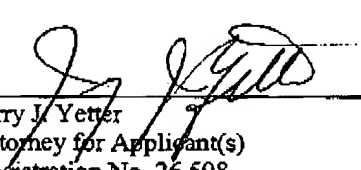
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The Examiner's attention is directed to the data appearing in the specification. The effect of pH on the antimicrobial activity of the present lauryl sulfate compositions is demonstrated by the data presented at page 14 (ref. WO 99/00026), Examples D, E and F. See also the % reduction data for sodium lauryl sulfate at page 14, Example G. As stated by the Applicants (p. 13, par. 4), "To achieve significant reductions in counts (>50% in 1 min.) requires a pH greater than 10.5."

To summarize: '295 does not teach or suggest the lauryl sulfate surfactant. Conversely, '649 does teach lauryl sulfate, but not at a pH that provides significant antimicrobial activity. And, neither '295 nor '649, nor the combination thereof, even suggests the problem of contaminated water supplies, much less its solution in the manner of the present invention. Accordingly, reconsideration and allowance of Claim 14 are requested.

In light of the above remarks and amendments, early and favorable action in the case is respectfully requested.

Respectfully submitted,
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